



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
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Philadelphia, Pennsylvania 19103-2029**

28 OCT 2011

Jeff Blanton
Director, Office of Program Development
Federal Highway Administration-West Virginia
Geary Plaza, Suite 200
700 Washington St. E
Charleston, West Virginia 25301

Re: Tier One Draft Environmental Impact Statement for the National Highway System
Corridor between I-68 and Corridor H, US 220, Maryland and West Virginia, July 2011

Dear Mr. Blanton,

In accordance with the National Environmental Policy Act (NEPA) of 1969, Section 309 of the Clean Air Act and the Council on Environmental Quality regulations implementing NEPA (40 CFR 1500-1509), the U.S. Environmental Protection Agency (EPA) has reviewed the Tier One Draft Environmental Impact Statement (DEIS) for the National Highway System (NHS) Corridor between I-68 and Corridor H, US 220. The study has been jointly prepared by the Federal Highway Administration (FHWA), West Virginia Division of Highways (WVDOH) and Maryland State Highway Administration with WVDOH as the lead state agency. The approximate 40 mile proposed highway project would involve connecting Interstate 68 (I-68) near Cumberland, Maryland and one of the proposed interchanges on Corridor H in West Virginia. The project is located in Grant, Hardy, Hampshire and Mineral Counties in West Virginia, and Allegany County in Maryland. As a result of our review and coordination with resource agencies, EPA believes that while the proposed build alternative corridors appears to meet the project needs, the build alternatives will result in significant adverse environmental impacts. EPA recommends that multiple corridors, in addition to the No Action alternative, be retained for study in Tier Two.

The purpose of the proposed action is to develop an improved north-south transportation corridor connecting I-68 in western Maryland and Corridor H in West Virginia that will become part of the NHS. The need for the proposed project is due to geometric deficiencies on the existing US 220 alignment and parallel roadways, inadequate roadway capacity, safety deficiencies, the need to support economic development efforts, and the need to provide additional system linkage to complete the regional road network.

The Tier One DEIS evaluates corridors at the planning level of detail. Tier One intends to screen build alternative corridors by considering major environmental factors that can be

incorporated into the planning process at a very early stage. At the conclusion of Tier One, a preferred corridor or corridors will be identified and advanced to Tier Two. Tier Two will include more detailed studies on the advanced corridor(s) from Tier One, as well as additional coordination and consultation with federal, state, and local agencies. Additional avoidance and minimization of impacts to resources will also be included in Tier Two.

EPA, as a cooperating agency on this project, has been involved with the preliminary review of the project purpose and need, as well as preliminary review of proposed alternatives, and has provided comments. The DEIS discussed several alternatives that were initially considered but not retained for further study in the document. One of these, Corridor A, was dropped after resource agencies expressed concerns about impacts to Dans Mountain Wildlife Management Area. Corridor A would have directly bisected this important Maryland Department of Natural Resources (MD DNR) resource. EPA greatly appreciates efforts that have been made in the early stages of alternatives analysis to avoid impacts to key environmental resources. EPA supports exclusion of Corridor A and E from further analysis.

The Tier One DEIS examines four alternatives, including the no action alternative. All of the action alternative corridors are 4,000 feet (ft) wide, however it is estimated that only 300 ft will be needed for a highway alignment. The action alternatives include Corridor B, Corridor C and Corridor D. Corridor B is approximately 34.2 miles in length, originating at I-68 near LaVale, Maryland, and extends southwest to Corridor H near Scherr, West Virginia. Corridor C is approximately 44.5 miles in length, originating at I-68 near Cumberland, Maryland, and extends southwest to Corridor H near Maysville, West Virginia. Corridor D is approximately 45.3 miles in length, originating at I-68 near LaVale, Maryland, and extends south to Corridor H at Moorefield, West Virginia. At this time, a preferred alternative has not been identified. All of the build alternative corridors have significant adverse impacts to the environment. Direct impacts to streams could range between approximately 56 – 85 miles. Direct impacts to wetlands could range between 118-152 acres. It is understood that impact levels are “inflated” as a 4000-foot corridor is considered, but there is concern that potential build alignments could have an objectionable amount environmental impact.

EPA is concerned about the potential adverse impacts to aquatic resources, including streams, wetlands and floodplains. Corridor B has the potential to directly impact 300,239 ft of perennial and intermittent stream, 118 acres of wetland and 775 acres of floodplain. Corridor C could potentially directly impact 330,834 ft of perennial and intermittent stream, 152 acres of wetland, and 719 acres of floodplain. Corridor D has the potential to directly impact 448,803 ft of perennial and intermittent stream, 143 acres of wetland and 2,244 acres of floodplain. All of the corridors have the potential to have adverse impacts to large amounts of aquatic resources, even if the right-of-way is reduced to one tenth the corridor. It should also be noted, that Tier One stream impact information does not include potential impacts to ephemeral streams. The Tier One does not include detailed stream and wetland information, for example quality, habitat values, function, or size. EPA requests that FHWA work with appropriate federal and state resource agencies to determine what areas may be sensitive and what measures will be appropriate. Additional comments on aquatic resources can be found as an enclosure to this document.



The DEIS states on page 4-114 that “excavation waste material may be used to build modest fill areas without encroaching on sensitive features or affecting the operating characteristics of the system.” Please clarify what is meant by modest fill features and if these fill features will be placed in stream valleys; please state how large these features may be and how many could potentially be encountered within the corridor. Disposal of excavation waste should be placed in upland locations, outside of streams and other aquatic resources. The Final EIS and any subsequent documents should discuss options for transporting waste for disposal in upland locations. The DEIS mentions that waste materials may be used for site developments where they are planned but existing terrain is unsuitable; use of excavation waste to support development is not included as part of the project purpose and need.

Large impacts to terrestrial resources, including forest and parklands, are objectionable to EPA. Corridor B could potentially impact 9,890 acres of forest and six potential Section 4(f) resources. Corridor C could potentially impact 11,130 acres of forest and 13 potential Section 4(f) resources. Corridor D has the potential to impact 11,409 acres of forest and 21 potential 4(f) resources. Although it is stated in the DEIS that forest impacts will be mitigated, we believe that the loss of mature forest will take decades to replace and will have adverse impacts on forest interior dwelling species (FIDS). Both Corridors B and D are likely to result in adverse impacts to Dans Mountain Wildlife Management Area (WMA) in Maryland, which spans the entire width of both corridors offering no opportunity for avoidance. Dans Mountain WMA is the largest contiguous state-owned tract of forestland in Maryland and is managed by MD DNR. It is also known to contain at least one stream, Mill Run, which is habitat for brook trout. Corridor D would also impact the Middle South Branch Valley Rural Historic District and the Moorefield Battlefield which span the entire width of the corridor. The Chesapeake-Ohio Canal, Chesapeake and Ohio National Historic Park and the Potomac Heritage National Scenic Trail are within Corridor C and with no apparent opportunity for avoidance if the corridor is selected. National Park Service has expressed concerns about impacts to the Chesapeake-Ohio Canal in their September 24, 2010 letter stating that “The project is not compatible with the C&O Canal NHP General Plan.”

While EPA recognizes that limited information is available for review in Tier One and that more detailed information is planned to be included as part of Tier Two, EPA is concerned that the selection of a build alternative will result in significant adverse environmental impacts. EPA strongly recommends that further NEPA documentation, including Tier Two and any break out projects, for this project be evaluated in an Environmental Impact Statement with full resource agency and public stakeholder participation. The EPA recognizes that a great deal more can be done to minimize the environmental impacts of the construction and operation of the highway, but that many details of highway location and design, construction methods, sediment control, etc will not be defined until later in the process. Full avoidance and minimization efforts, particularly to aquatic resources, need to be investigated and accomplished utilizing all best available technologies, including longer bridges, advanced stormwater management concepts, and reduced highway widths in sensitive areas. Extra precautions should be taken when working in sensitive areas. EPA would like to see commitment made in the Final EIS to study alignment alternatives which avoid valuable resources and incorporate best technologies for natural resource impact avoidance and minimization.



Based on our review of the Tier One DEIS and in light of the fact that no preferred alternative has been identified, EPA has rated the environmental impacts associated with all of the action alternative corridors as Environmental Objections (“EO”) and the adequacy of the impact statement as “2” (Insufficient Information). This rating is due to the direct, indirect and cumulative impacts of the proposed corridors on aquatic resources, including streams, wetlands and floodplains, and terrestrial resources, including forest and parkland. Details on the basis for this rating are contained in the remainder of this letter. A description of our rating system can be found at: www.epa.gov/compliance/nepa/comments/ratings.html.

Please consider the issues, questions and comments included in this letter and enclosure. EPA believes that with careful analysis and selection of alignment, environmental objections could be reduced. We recognize the complexity of the analysis needed and difficulty in balancing impacts to natural resources, farmland and communities for any build alternative. EPA emphasizes that seeking input of the interagency team, through continued interagency meeting and coordination, is an effective and necessary step to assist with assessment of resources while developing ideas for avoidance, to improve project outcome. EPA looks forward to the continued interagency involvement in the Tier One Final EIS and subsequent NEPA study for the development of an alignment. We would appreciate the opportunity to discuss the comments provided here, at your convenience. Thank you for allowing EPA with the opportunity to review and comment on the Tier One DEIS for US 220. If you have questions regarding these comments, the contact for this project is Ms. Alaina DeGeorgio; she can be reached at (215) 814-2741 or degeorgio.alaina@epa.gov.

Sincerely,



Jessica Martinsen
Acting Associate Director
Office of Environmental Programs

Enclosure

cc Jessica Greathouse, USEPA
Mitch Keiler, USFWS
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Mary Frazer, USACE Baltimore
Sarah Workman, USACE Huntington
Greg Golden, MD DNR
Greg Bailey, WV Division of Highways
Bill Carver, MD SHA
Bruce Grey, MD SHA
Jeanette Mar, FHWA DELMAR
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Technical Comments on the Tier One US 220 DEIS

Environmental Justice

While EPA understands that more detailed analysis for impacts, additional community outreach, and identification of populations will occur in Tier Two, EPA remains concerned about possible impacts to environmental justice (EJ) communities within the study area. Tier One has identified that the potential for EJ concerns exist for each of the corridors. Tier Two should consider at-risk populations that are small in number. There is no relationship between the size of the EJ community/impacted populations and the existence of an EJ concern. The EJ assessment should take into consideration the localization of impacts, proximity to population, multiple impacts, displacements, hazards such as fugitive dust, and any other potential adverse impacts that may affect populations of concern. Data used in the evaluation should be representative of current populations, utilizing the most up to date data available. The document notes that Tier Two analysis will be conducted using data from the 2010 U.S. Census. Additional outreach and data gathering to assure that areas of concern identified in the cursory assessment accurately represent those populations will be needed in Tier Two.

Community Impacts

The DEIS identifies potential impacts to community cohesion for all three of the action corridors. Corridor B and D could impact community cohesion in the Cresaptown – Bel Air area, the west end of Keyser, and south of Keyser between the Polish Pines Golf Club and Keyser High School. Corridor C could impact community cohesion along WV 28 from Wiley Ford to Short Gap, and near Fountain, WV. It is not clear in the DEIS how impacts to community cohesion will be analyzed or addressed in Tier 2.

Commercial and residential business displacements were also considered in Tier One. Corridor B could impact 4,060 acres of built-up land, which includes residential, commercial, industrial, and mixed use of a similar nature. Corridor C could impact 2,940 acres of built-up land; and Corridor D could impact 3,820 acres of built-up land. EPA is concerned about the amount of potential residential and commercial displacements that are possible for each action corridor.

Rare, Threatened and Endangered Species

EPA is concerned about the magnitude of potentially impacted federally and state listed rare, threatened and endangered species. Of particular concern are the eastern brook trout, shale barrings rock cress, wood rat and Indiana Bat. Also of concern is the bald eagle, while no longer listed is under the protection of the Golden and Bald Eagle Protection Act. Dans Mountain WMA is a rich habitat area and unique resource that is known habitat to many Maryland state listed species. EPA remains very concerned about potential impacts to this resource and the species that inhabit the WMA. Additional coordination with Fish and Wildlife Service and appropriate state agencies will be necessary in Tier Two. EPA recommends that Service and state recommendations for surveys and avoidance and minimization of impacts to listed species



and habitat be followed.

EPA is concerned about potential wildlife passage issues with the proposed project for rare, threatened or endangered (RTE) species. Passage for these sensitive species should be addressed in Tier Two. Passage concerns for non-RTE species should also be included in Tier Two. Discuss what efforts can be/will be made to promote passage of both large and small animals from one side of the alignment to the other, as well as ways to decrease potential for animal/vehicle collisions and strikes.

Aquatic Resources

- Tier Two coordination for aquatic resources should involve resource agencies, especially for field reviews. Coordination is necessary to help identify high quality, high value streams and wetlands. Efforts must be made to avoid and minimize impacts to these resources.
- The DEIS used the National Wetland Inventory (NWI) to identify the amount of wetlands that are potentially in each corridor. While NWI can be used to generalize potential wetland amounts, it does not replace the need for detailed site investigations and for waters of the U.S. to be delineated using the most recent supplements. In many cases there can be more wetlands on a site than are listed on NWI.
- In this ecoregion, which tends to be dominated by rolling hills and mountains, and narrow stream valleys, wetland systems are not usually as plentiful as they are in ecoregions in the eastern part of Maryland or West Virginia. EPA is concerned about the potentially large adverse wetland impact, especially in this area with comparatively fewer wetland resources. A commitment to continue to avoid and minimize impacts to wetlands and streams in Tier 2 should be emphasized by FHWA.
- Corridor B and corridor D could potentially impact Pinto Marsh, a Maryland Wetland of Special State Concern (WSSC). More information about this resource should be included in Tier Two, as well as information about state listed rare, threatened or endangered species that inhabit Pinto Marsh. EPA recommends avoiding adverse impacts to this resource as much as possible.
- Tier Two should include an in depth stream water quality data from monitoring, as well as detailed habitat assessment information and benthic macroinvertebrate data. This information is needed to help identify high quality streams that may need additional avoidance, minimization or mitigation efforts. Minimization techniques should include spanning or bridging aquatic resources. Tier Two should include information about perennial, intermittent and ephemeral streams that are in the corridor(s).
- Tier Two should begin to identify any necessary stream closure periods or steps to work with resource agencies to identify if stream closures are appropriate.

Farmlands

Each of the action corridors could impact prime, statewide and locally important farmlands. Corridor C contains some lands in MD that are Agriculture Land Preservation Districts. Corridor D contains 67 acres of WV Preserved Farmland Easements. The selection of any of the action corridors could result in impacts to farmland and agricultural resources. Tier Two should



include avoidance and minimization of these resources.

Indirect and Cumulative Impacts

The DEIS included a discussion of possible indirect and cumulative impacts that could result should an action alternative be selected. Additional more detailed indirect and cumulative impact assessment would be conducted in Tier Two. Tier One provides a less detailed evaluation of indirect and cumulative impacts. The indirect impact analysis used a one mile area around each possible interchange for the limits of their analysis, assuming that development would occur within this area impacting wetlands, streams, floodplains, forests, farmlands and historic resources that occur within the radius. Corridor B would have 6 interchanges indirectly impacting a total of 69 acres of wetland, 284,250 ft of perennial and intermittent stream, and 50 acres of flood plain. Corridor C would have 5 interchanges indirectly impacting 32 acres of wetland, 338,355 ft of perennial and intermittent stream, and 263 acres of flood plain. Corridor D would have 6 interchanges indirectly impacting 81 acres of wetland, 351,642 ft of perennial and intermittent stream, and 1,547 acres of floodplain. While the indirect impact analysis only evaluated impacts occurring within one mile of interchanges in Tier One, indirect impacts are not limited to this radius and can occur beyond one mile. Indirect impacts resulting from the ultimate construction of this project are significant. Additional evaluation and discussion of mitigation strategies or controls is needed in Tier Two.

Interagency Coordination

EPA appreciates the efforts made to include the large number of government agencies with regulatory authority in the NEPA and permitting process. It is recognized that the project has an unusual situation of agencies also being landowners in the study area. This will require particularly careful coordination. It is appreciated that agencies were given the opportunity to review preliminary copies of NEPA documents prepared for the project, and it is hoped that this advanced coordination will continue through the tiered development of the project. It is also of note that comments from some agencies were not included in the final draft, and that errata pages were not forwarded. Other agencies did not receive copies of the final draft documents for review. The project is complicated as it spans two states and federal jurisdictions, but coordination will need to proceed (and improve) as the project continues.

Please find our attached comments made on the preliminary Tier One Draft EIS; these comments were not incorporated into the final DEIS.





EPA comments US 220

Alaina DeGeorgio to: ben.l.hark

Cc: Barbara Okorn

11/18/2010 10:06 AM

Hi Ben,

Below are EPA's comments on the US 220 Tier One pre-Draft EIS. Please contact us if you have any questions. We look forward to working with you on this project.

Thanks,

Alaina

-More detailed information is needed about Pinto Marsh and about state listed threatened, rare or endangered species that live there. We recommend avoiding this unique resource as much as possible.

-Dan's Mountain Management Area is an important natural area that is proposed to be affected by TS-B. While we appreciate that TS-A was dropped from further consideration for potential impacts to Dan's Mountain, we suggest that impacts to this area by TS-B be avoided and minimized to the maximum extent practicable. We are also concerned about the eastern brook trout that may have habitat in streams along the eastern face of Dan's MT in these areas. We recommend that further coordination and consultation with FWS and other agencies be completed on this issue.

-Coordination and consultation will also be needed for the various other potential impacts to federally and state listed T&E species. We are concerned about the magnitude of potentially impacted species. Of particular concern are the wood rat, and shale barrings rock cress. We defer to the expertise of FWS in this area.

- More detailed information is needed for wetlands and streams within each transportation scenario. Further information is needed about the quality of resources within these corridors in order to determine if a particular corridor is environmentally preferable. At this time, we do not feel as though we have enough detailed information to make an informed decision on which transportation scenario should be carried forward to Tier 2.

-Steps and decisions that will be taken during Tier 2 should be clarified. We recommend that more than one transportation scenario be carried forward into Tier 2 for more detailed analysis. With the level of information provided in Tier 1, it is difficult to discern the true amount of adverse impact between scenarios. It would be helpful to discuss how much opportunity for avoidance and minimization of impacts to resources exist within each scenario.

-How frequently are air attainment areas assessed and re-evaluated? The limited air data provided is from 2006. If possible, provide the most up to date air information. Be sure to include all attainment and air quality information beyond ozone and particulate matter, which were included in the draft. In section 4.6.1, it is assumed that mobile source air toxics (MSAT's) will decrease as a result of outside forces, and lower than values were used in analysis. It may be more prudent to use current amounts of MSAT's for analysis, it may give a more accurate representation of worse case scenario. It shouldn't be assumed that outside forces will lower MSATs. We also question the use of CO concentrations as the sole indicator of National Ambient Air Quality Standards (NAAQS).

-Effects analysis for community facilities and parks and recreational areas only discuss possible positive impacts, without analysis of any possible negative impacts. The document states that impacts will be analyzed in Tier 2, however we recommend that some level of analysis be included in Tier 1. A discussion of facility displacements and lost of park or recreational land should be included.

-Noise analysis was not included in the document. Is noise planned to be addressed in Tier 2. A description of the existing noise environment should be included in the affected environment section. Discussion of potential noise volumes during construction and post-construction should be included. While specific volumes may not be available at this time, a general discussion and inclusion in the document would be beneficial. It is difficult to evaluate noise impacts on potential noise sensitive areas bases solely on the quantity. Please included a more how noise is being addressed in tier 1 and tier 2.

-A discussion of potential environmental mitigation for unavoidable adverse impacts should be included.

-More detailed information about proposed interchanges should be included in the conclusions.

-Additional information is needed about the projects connection to Corridor H. It isn't clear where this project is in terms of planning, construction, authorization, planned opening date, capacity, etc.

-Clarification is needed for watersheds and subbasins given in Section 3.3.1.2. Subbasins refer to the HUC 8 size, ie North Branch of Potomac and South Branch of Potomac subbasins. Georges, Wills, Evitts, Patterson, and New Creeks all appears to be located within the North and South Branches of the Potomac subbasins. Please keep HUC levels consistent. It would also be helpful to breakdown impacts to streams and wetlands at the subwatershed level. This information would be helpful in assessing potential impacts associated with each scenario.

-Cumulative impact section needs to be more in depth. Impacts to affected resources should be considered, in addition to listing what other projects are in the area. Section 4.8.2.3 says that cumulative impacts are expected to accrue at a comparable existing trends and likely to be absorbed by development. Please clarify what this statement was intended to imply. It seems to be suggesting that cumulative effects are minimal or that they do not warrant mitigation. Without the proper cumulative effects analysis conducted it should not be stated that cumulative effects are minimal.

-Section 4.11.2 Construction Effects Analysis needs more detail. How long is the construction period expected to be, will the project be completed in sections, how long are temporary construction impacts expected for local residents? Clarify what information will be provided in Tier 2, for example road and traffic closures, staging areas, erosion and sediment controls, disposal of road cut waste, air/fugitive dust, etc. Impacts from construction should be evaluated in the environmental consequences section by resource.

-Section 4.1.3.2 Environmental Justice Effects analysis needs more detail and some clarification. There is no relationship between the size of the EJ community/impacted population and the existence of an EJ concern. Many times at-risk populations are small in number. This information should be reflected in the document. Maps outlining the location of at-risk populations in the study area, as well as tables that include screening thresholds, census tract percentages and block group percentages for minority and low-income populations should be included. The EJ assessment should take into consideration the localization of impacts, proximity to population, multiple impacts, displacements, hazards such as fugitive dust, and any other potentially adverse impacts that may affect populations of concern. Information should be provided to discuss how potential for adverse impacts would be evaluated. Consider the possible need to translate documentation into other languages. Potential benefits to minority and low income populations should also be discussed. Table ES-2 indicates that there is a potential for impacts that may be of EJ concern. Explain what these concerns are and who may be adversely impacted by them and why. It should also be noted that data used in the assessment is now ten years old, and may not be representative of current populations. Additional outreach and data gathering to assure that areas of concern identified by cursory assessment accurately represent those populations.

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